

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.10.2016

CORAM

The HON'BLE MR.SANJAY KISHAN KAUL, CHIEF JUSTICE

AND

The HON'BLE MR.JUSTICE R.MAHADEVAN

W.P.No.34412 of 2016

S.Soundarajan ... Petitioner

Vs

1. The Regional Deputy Commissioner (Central)
Regional Office (Central)
Greater Corporation of Chennai
Shenoy Nagar, Chennai-600 030.
2. The Zonal Officer
Zone 7, Corporation of Chennai
Ambattur, Chennai-600 053. ... Respondents

PRAYER: Petition under Article 226 of the Constitution of India for issuance of a writ of Mandamus forbearing the respondents from evicting the petitioner from his house situated at No.14, Vandiamman Koil Street, Padikuppam, Chennai-600 107 (bearing Town survey No. 59/3 and old Survey No.250/2 part) without following the due process of law.

For Petitioner : Mr.Stalin Abhimanyu

For Respondents : Mr.V.C.Selvasekaran

ORDER

(Order of the Court was made by the Hon'ble Chief Justice)

The petitioner has approached this Court seeking a writ of mandamus forbearing the respondents from evicting the petitioner from his house situated at No.14, Vandiamman Koil Street, Padikuppam, Chennai-600 107 (bearing Town

survey No. 59/3 and old Survey No.250/2 part) without following the due process of law.

2. The documents filed with the petition show that in terms of a Settlement Deed dated 23.7.2014, the father of the petitioner has settled the property in his favour. However, there appears to be certain family disputes regarding the subject matter, as the sister of the father of the petitioner filed W.P.No.7384 of 2016, in which the Division Bench passed orders on 29.2.2016. The said writ petition was filed for directions to the Commissioner, Corporation of Chennai, to consider her representation dated 6.10.2015 for initiation of appropriate action against illegal/unauthorized construction in respect of the very property forming subject matter of the present petition.

3. The Division Bench took a view that the partition suit in O.S.No.195 of 2009 pending on the file of the trial Court in respect of the subject matter requires that the petitioner therein may file an application in the suit for any appropriate relief rather than filing a writ petition and closed the writ proceedings.

4. The notice in question has been issued by the Regional Deputy Commissioner/first respondent herein to the petitioner's father in the following terms:

"From:	To:
The Regional Deputy Commissioner	A.Santhanam
Regional Office (Central)	No.14,PilliyarKoil Street
Greater Corporation of Chennai, Shenoy Nagar	Padipakkam Village
Chennai - 600 030.	Shenoy Nagar
R.D.C.(C) Legal/141	Chennai - 600 030.
/Inquiry/2016	Dated: 14.07.2016

Sir,

Sub: Corporation of Chennai - Zone-VII in related with Unauthorized Construction at Door No.14, Vandiyamman Koil Street, Mogappair East, Chennai - 37 - Inquiry fixed on 20/07/2016 - attend the Inquiry - Reg.

Ref: Order passed by the Hon'ble High
Court dt.29.02.2016 in
W.P.No.7384/2016 filed by
Neelavathi.

With reference to the above listed, you are hereby requested to appear before the Regional Deputy Commissioner (Central), Corporation of Chennai, Shenoy Nagar, Chennai - 600 030, for personal Inquiry on 20/07/2016 at 11.00 AM for the above said W.P.No.7384/2016 before in order to submit your grievances. Failing which, the above said matter will be decided in your absence based on the available records.

Sd/-

For Regional Deputy Commissioner (Central)"

5. We, thus, posed the following queries to the learned counsel for the respondents:

- i. Whether the order dated 29.2.2016 in W.P.No.7384 of 2016 contained any direction to the respondents, since the impugned notice dated 14.7.2016 purports to be in reference to the same?
- ii. Under which provision of law has such a notice been issued?

6. The learned counsel for the respondents concedes, on instructions from the first respondent, that there was no direction passed by the Court, which is also quite apparent from a reading of the said order. He further concedes that the notice mentions no provision under which it has been issued.

7. In the counter affidavit filed by the respondents, it has been averred that an inspection has been carried out of the site, which is stated to be fully unauthorized and, thus, steps have been taken under Sections 56 and 57 read with Section 85 of the Tamil Nadu Town and Country Planning Act, 1971. The factum of family dispute is also set out in the counter affidavit. The construction is stated to have been made pending the suit without any planning permission from the authorities concerned, against which representations were received. The stop-work notice was issued on 27.3.2015 and the lock and seal notice on 12.2.2016 with even a de-occupation notice dated 24.3.2016. It is at that stage the petitioner is stated to have approached this Court in the present proceedings.

8. On hearing learned counsel for parties, we find complete

non application of mind on the part of the first respondent. There is no direction contained in the order dated 29.2.2016 in W.P.No.7384 of 2016 which could have led to the issuance of any notice. If there was unauthorized construction carried out, as alleged in the counter, the respondents were free to proceed in accordance with law by issuing appropriate notices and that too in respect of the persons concerned. To take the cover of the Court order is something which appears to have become a regular practice, where even if no directions are passed by this Court and authorities are asked to take action, rather than taking recourse to the relevant provisions of law, without application of mind, the authorities are issuing notices.

9. In the given facts of the aforesaid case, in view of the pending partition suit, the Division Bench already refused to intercede on behalf of the sister of the father of the petitioner, leaving the issue to the Civil Court.

10. We are, thus, of the view that the writ petition has to be allowed and the impugned notice quashed. It is also a fit case where the first respondent must bear the cost of the litigation initiated by the petitioner on account of gross non application of mind and we quantify the cost at Rs.5,000/- (Rupees five thousand only) to be paid to the petitioner within two weeks.

11. The writ petition is, accordingly, allowed. Consequently, W.M.P.No.29643 of 2016 is closed.

12. We make it clear that since it is alleged that there is unauthorized construction at site and it has been found so in pursuance of inspection, our order will not preclude the respondent authorities to proceed in accordance with law in respect of the property in question by issuing appropriate notices to the owners and occupiers, but under the relevant provisions of the statutes.

Sd/-

Asst. Registrar.

/true copy/

Sub Asst. Registrar.

To

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Regional Office (Central)
Greater Corporation of Chennai
Shenoy Nagar, Chennai-600 030.
2. The Zonal Officer
Zone 7, Corporation of Chennai
Ambattur, Chennai-600 053.

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TRM (CO)
MD : 19/10/2016



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